

**COMMITTEE ON FINANCE**  
**(Standing Committee of Berkeley County Council)**

**Chairman:** Mr. Jack H. Schurlknight, Council Member District No. 6

A **meeting** of the **Committee on Finance**, Standing Committee of Berkeley County Council, was held on Monday, **October 26, 2009**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 6:19 p.m.

PRESENT: Acting Chairman Caldwell Pinckney, Jr., Council District No. 7; Committee Member Phillip Farley, Council District No. 1; Committee Member Timothy J. Callanan, Council District No. 2; Committee Member Robert O. Call, Jr., Council District No. 3; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Steve C. Davis, Council District No. 8; County Supervisor Daniel W. Davis, ex officio; Mrs. Nicole Scott Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Chairman Jack H. Schurlknight, Council District No. 6, and Committee Member Dennis L. Fish, Council District No. 5, were excused from this meeting.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

*During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.*

Acting Chairman Pinckney called the meeting to order.

**APPROVAL OF MINUTES**

Acting Chairman Pinckney asked for approval of minutes from meetings of the Committee on Finance held September 14, 2009 and September 28, 2009.

It was moved by Committee Member Call and seconded by Committee Member Callanan to **approve** the **minutes** as presented. The motion passed by unanimous voice vote of the Committee.

A. **Consideration** of the following:

1. A **resolution** granting extra holiday **leave** in recognition of the **2009 Holiday Season**.

It was moved by Committee Member Steve Davis and seconded by Committee Member Farley to **approve** consideration of the **resolution** granting extra holiday **leave** in recognition of the **2009 Holiday Season**.

Committee Member Callanan questioned the details of this proposed resolution.

Supervisor Daniel Davis responded that County employees would receive one (1) day extra in holiday leave, which would be Monday, December 28<sup>th</sup>.

The motion passed by unanimous voice vote of the Committee.

**2. A resolution** determining that **Pine Tree Cablevision Associates** is not in compliance with the Berkeley County Cable Television Ordinance.

It was moved by Committee Member Steve Davis and seconded by Committee Member Callanan to **approve** consideration of the **resolution** determining **Pine Tree Cablevision Associates** not to be in compliance with the Berkeley County Cable Television Ordinance.

Committee Member Call questioned the area in which Pine Tree Cablevision provided its services.

Acting Chairman Pinckney responded that Pine Tree Cablevision serviced the Pineville Area of the County.

Committee Member Call questioned for clarification if Pine Tree was delinquent of 2007 and 2008 fees, and if those fees were due within 90 days of the end of each of those years.

Acting Chairman Pinckney responded that to be correct.

Committee Member Call stated that Pine Tree was past due for two years, with those fees being self-reporting. Committee Member Call questioned if the County had auditing measures in place, in order to determine the dollar amount of the delinquent fees.

Mrs. Nicole Ewing, County Attorney, stated that it was her believe that the County's Cable Franchise Ordinance allowed for a County audit. It could only be assumed that Pine Tree was not paying the required amount, because the County had not received any payments. In 2005 and 2006, approximately \$11,000 and \$9,000, respectively, had been paid. Mrs. Ewing stated that it was her understanding that Pine Tree was still operating and providing cable services to citizens/residents of Berkeley County. Therefore, if Pine Tree was still operating, there would be some sort of franchise fee, but the actual dollar amount owed was unknown because it was self-reporting. Prior payments reflected a decline, which would possibly suggest customer shift to other sources, such as Direct TV or Dish Network.

Committee Member Call questioned how the County would know if Pine Tree was paying the true amount owed in fees without an audit performed.

Mrs. Ewing responded that as with any self-reporting agency, the County would not know the true amount without an audit.

Committee Member Call read Item #4, of the proposed resolution stated, as follows: "Should Pine Tree Cablevision Associates fail to bring its franchised system into compliance within 30 days after notification of this resolution, any and all franchise agreements between Berkeley County and Pine Tree Cablevision Associates shall be considered terminated." Committee Member Call questioned how Pine Tree would be stopped from servicing customers at that time, and what cable provider would fill the gap for cable service.

Mrs. Ewing responded that no company would fill the gap unless a company took over Pine Tree's franchise area. Some cable providers such as Comcast and Home Telephone have cable franchises for the entire unincorporated areas of Berkeley County, so those companies would have a right, under the terms of their franchise agreements to move forward and provide that service. This would be assuming those companies had lines running to that area or had a desire to install lines into that area. If Pine Tree did not stop servicing the area based on notice from Council alone, the County would most probably have to take some sort of legal action, appear before a judge and secure an injunction ordering Pine Tree to stop its service.

Acting Chairman Pinckney questioned if those other cable companies already had lines in the area of concern, in order to provide cable service to residents.

Mrs. Ewing responded that she did not have personal knowledge with regard to Chairman Pinckney's question, but if the other companies were not offering cable service in that area at this time, it was possible that they did not have any lines there. This was merely speculation.

Acting Chairman Pinckney stated his concern that if service was terminated for non-payment, there would be a discontinuance of service to citizens in the area. Those citizens did have other options, but based on past experience, the County has had problems with Pine Tree with regard to timely payment of its fees.

Committee Member Call stated that the area needed to be serviced by a company which would remain in compliance with a franchise agreement.

Supervisor Daniel Davis stated that the proposed resolution would just be the first action taken by notifying Pine Tree that it was in violation of the franchise agreement. It was possible, through publicity, that some of the other companies would express some interest.

Committee Member Call stated that it appeared to be "open-ended", as no other company would want it, and the County would continue with the current arrangement, in order for citizens to have cable service.

Supervisor Daniel Davis stated that another option for citizens would be to use one of the satellite companies.

Mrs. Ewing stated for clarification that the Legal Department had already sent written notice to Pine Tree via a letter stating that it was not in compliance. A draft of the proposed resolution was also sent, and Pine Tree was informed that this proposed resolution would be brought before Council this night. No response was received from Pine Tree with regard to that letter sent.

Mrs. Ewing continued and stated that the County had to balance whether or not it would take cable service away from citizens, but the alternative would be to allow a cable company to continue operating and not pay the fees due Berkeley County. Pine Tree's fees to the County were relatively small in comparison to other companies such as Time Warner and Comcast. Mrs. Ewing recommended that a precedent not be set, wherein, a cable company be allowed to continue operating, but not paying its fees, as franchise fees were significant revenue paid to the County.

Committee Member Callanan questioned what would happen to equipment in the right-of-way if a franchise agreement was terminated.

Mrs. Ewing responded that two years ago when the County faced a similar issue with Pine Tree, a representative for the company stated that if Berkeley County wanted to terminate its cable franchise agreement, that would be fine, but Pine Tree would rip up all the equipment and not allow another cable company access to it. Mrs. Ewing stated that she had not performed research to see if that was allowed, but the equipment did belong to Pine Tree.

Committee Member Farley questioned if there was a fine mechanism drafted within the ordinance.

Mrs. Ewing responded that she could research that item. Recently, the State of South Carolina took control of cable franchise agreements. Berkeley County is operating under the old system, as the agreement with Pine Tree predated the new state system. It was unknown if Berkeley County could make any changes to its cable franchise ordinance in light of the new state provisions.

Committee Member Farley stated that Pine Tree was late in its payment to the County in 2006 and 2007. Now, two and one-half years has passed without a payment, and the County had only notified Pine Tree by mail. Committee Member Farley recommended that the Legal Department research to see if a fine could be imposed for every day of non-compliance, if not with this matter, possibly for future incidents.

Mrs. Ewing responded there to be a general provision in the Code stating any violation of Berkeley County ordinances would be subject to fine. This general provision for fining Pine Tree would be explored.

Committee Member Call questioned the potential in logistics if another company was allowed the area serviced by Pine Tree, in order for that other company to install infrastructure while citizens continued to receive cable service provided by Pine Tree.

Mrs. Ewing responded that there were at least two cable companies which already had the right to operate cable franchises in all of the unincorporated areas of Berkeley County. At this time, without Pine Tree even being an issue, those other companies could go in, install equipment and provide cable service. Pine Tree's compliance would not be a reason for other cable companies to not service the area. That would be a business decision of another cable company, and whether or not the other cable company found it cost effective to service an area. Berkeley County cannot force a cable company to provide service to an area.

Committee Member Call expressed his concern that citizens would be left without cable service, potentially, for a long period of time.

Mrs. Ewing stated that if another company decided to provide service to that area, Council could elect to withhold termination of Pine Tree's franchise until such time that the other company was positioned to provide service. It would be difficult to plan for such a timing without the County instituting discussion with other companies to even find out if there was an interest for another company to expand its service area.

Committee Member Steve Davis stated that he lived out in the Pineville Area, and cable was very important, but it was not a utility, such as one that would provide an individual to live in light or darkness. Committee Member Steve Davis questioned if there was a term in relation to the length of time a franchise contract would exist with the County.

Mrs. Ewing responded that the file would need to be reviewed, but she believed the term to be 15 years. Mrs. Ewing stated that she did not know at what point in time the existing term was. Council renewed the franchise fairly recently, at least once in the seven years Mrs. Ewing has been employed by the County. There could be, maybe, 10 years left with the Pine Tree agreement.

Committee Member Steve Davis concurred with Committee Member Farley's recommendation to pursue the possibility of fines and whether or not there could be any mechanical liens in lieu of Pine Tree's non-payment of its franchise fee. That may not have been negotiated or addressed in the original franchise agreement. It would be incumbent of Council to move forward. If a company entered into an agreement with Council, and it was not adhering to the terms of that agreement, there could be side effects in relation to citizens experiencing cable disruption. The larger issue here was whether or not there was compliance with an agreement entered into with the County. Committee Member Steve Davis recommended that Council move forward with this proposed resolution, in addition to compliance being addressed, but cautiously, in order to find some alternative subscriber source. "If the cable is cut off, maybe folks would read more books. It would not be the end of the world."

Committee Member Callanan questioned if Pine Tree provided service to any counties or states other than the Pineville Area of Berkeley County.

Mrs. Ewing responded that it was her belief it did, but she did not know for certain. Pine Tree's mailing address is in Pennsylvania. It was possible that with having a home office in Pennsylvania, it could suggest that Berkeley County was not the only area being serviced.

Committee Member Callanan recommended that the Association of Counties be contacted in order to find out what other counties did with regard to securing the ability to procure payment of fees (i.e., by way of mechanical liens on equipment).

Mrs. Ewing responded that she would research Committee Member Callanan's recommendation. Mrs. Ewing stated that basically, at this point, Berkeley County already granted its last cable franchise, because the State of South Carolina had recently taken control of all cable franchises. Any contract which would come up for renewal with the County at this time would be subject to the state's provisions. The only opportunity Berkeley County would have would be to approve or disapprove and what the County's current franchise rate would be. Certainly, if there was a company such as Pine Tree to seek renewal, Berkeley County could articulate its reasons and past problems for not renewing an agreement. Mrs. Ewing reiterated that she would perform research to see what other counties were doing and what could possibly be enforced under the County's current agreements which did not fall under the new state rule.

Committee Member Call questioned if franchise fees were itemized on the cable bills sent to customers. The fees on those bills would be collected in the name of Berkeley County.

Mrs. Ewing responded that she believed that to be correct.

Committee Member Call stated that the franchise fees billed were very similar to monies withheld with regard to income taxes. These were fees taken from someone else, which belonged to someone else, and there should be serious consequences for not passing those fees on. If this company were properly funded, it could have paid those fees, because they had already been paid to Pine Tree by way of customers paying their cable bills.

Mrs. Ewing concurred with Committee Member Call. It was not Pine Tree's money to hold onto. The fees belonged to Berkeley County, and Pine Tree should not be supplementing its budget by retaining those funds.

The motion passed by unanimous voice vote of the Committee.

**3. A resolution** in support of the issuance by the South Carolina Jobs Economic Development Authority of its Economic Development Revenue Bonds

(**Goodwill Industries of Lower South Carolina, Inc., Project**), Series 2009, pursuant to the provisions of Title 41, Chapter 43, of the Code of Laws of South Carolina 1976, as amended, in the aggregate principal amount of not exceeding \$25,500,000.

It was moved by Committee Member Steve Davis and seconded by Committee Member Farley to **approve** consideration of the **resolution** in support of the issuance by the SC Jobs Economic Development Authority of its Economic Development Revenue Bonds (**Goodwill Industries of Lower South Carolina, Inc., Project**), Series 2009, not to exceed \$25,500,000. The motion passed by unanimous voice vote of the Committee.

**4. A resolution** proclaiming the week of October 23-31, 2009 as **National Red Ribbon Week** in Berkeley County.

It was moved by Committee Member Callanan and seconded by Committee Member Cathy Davis to **approve** consideration of the **resolution** proclaiming the week of October 23-31, 2009 as **National Red Ribbon Week** in Berkeley County. The motion passed by unanimous voice vote of the Committee.

**5. A resolution** approving the assignment of existing **fee-in-lieu** of tax arrangements with Berkeley County by **Lanxess Corporation** to Cooper River Partners, LLC, or its permitted designee.

It was moved by Committee Member Callanan and seconded by Committee Member Farley to **approve** consideration of the **resolution** approving assignment of existing **fee-in-lieu** of tax arrangements with Berkeley County by **Lanxess Corporation** to Cooper River Partners, LLC.

Committee Member Farley questioned who Cooper River Partners, LLC, was.

Supervisor Daniel Davis stated it to be an in-state investment company, which would be purchasing all the property that Lanxess Corporation was currently situated upon. It would be a transfer of ownership.

Mrs. Ewing stated this request originated from the company itself. It was not a staff-generated request. There was a representative in the audience to answer any questions Council might have.

Mr. George Morrison, the attorney representing Lanxess Corporation, stated this to be a transfer of an existing fee-in-lieu by Lanxess to Cooper River Partners. Lanxess was originally Bayer Corporation. There had been a number of assignments and splits of this fee-in-lieu arrangement at Bushy Park to-date. This would be a transfer of existing arrangements.

Acting Chairman Pinckney asked Committee Member Farley if Mr. Morrison answered his question.

Committee Member Farley responded that Mr. Morrison did not. Committee Member Farley stated that he had a lot of customers working at the Lanxess Plant, and they were questioning who Cooper River Partners were.

Committee Member Steve Davis questioned the number of years the County had a fee agreement with Lanxess.

Mr. Morrison responded there to be three different fees-in-lieu assigned. There was one from 2004, one from 1999, and one that was originally put into place in 1991 and then amended a number of times. Some of the agreements were close to running out, and some had a number of years left to run. There were a lot of different assets with a lot of fees-in-lieu. Mr. Morrison stated it to be his understanding that the new purchaser would buy a number of those assets and continue operating that facility.

The motion passed by unanimous voice vote of the Committee.

**B. Consideration prior to First Reading of an ordinance to amend the Agreement for Development of a Joint County Industrial Park**, executed on April 24, 1995, by and among Berkeley County, South Carolina, and **Williamsburg County**, South Carolina, providing for the development of a jointly owned and operated Industrial/Business Park so as to include additional property in both Berkeley County and Williamsburg County as part of the Joint County Industrial Park, and other matters related thereto.

It was moved by Committee Member Steve Davis and seconded by Committee Member Callanan to **approve** consideration, prior to **First Reading**, of an **ordinance** to amend the Agreement for Development of a **Joint County Industrial Park**, executed on April 24, 1995, by and between Berkeley County and **Williamsburg County**.

Committee Member Farley questioned if the property bordered Williamsburg County or if it was in the multi-county park.

Supervisor Daniel Davis responded that property did not necessarily need to border Williamsburg County to be a multi-county park. Williamsburg County has been Berkeley County's traditional partner in multi-county parks.

The motion passed by unanimous voice vote of the Committee.

**C. Review prior to Second Reading of the following:**

**1. Bill No. 09-43**, an **ordinance** amending Ordinance Number 09-07-35, providing for the fiscal year beginning July 1, 2009 and ending June 30, 2010 for the **Tall Pines Special Tax District** revenues and expenditures.



It was moved by Committee Member Cathy Davis and seconded by Committee Member Steve Davis to **approve** review, prior to **Second Reading**, of **Bill No. 09-43**. The motion passed by unanimous voice vote of the Committee.

**2. Bill No. 09-44**, an **ordinance** authorizing the execution and delivery of a fee agreement between Berkeley County, South Carolina, and **Joseph T. Ryerson & Son, Inc.**; and matters relating thereto.

It was moved by Committee Member Callanan and seconded by Committee Member Cathy Davis to **approve** review, prior to **Second Reading**, of **Bill No. 09-44**.

Committee Member Callanan asked for an explanation of this bill.

Mr. Gene Butler, Economic Development Director, stated Joseph Ryerson to be the parent company for JM Tull, which is a steel company, located on Steel Circle near Nucor. This was a company that had expanded or was expanding with \$4,300,000 in equipment this year. Last year, it expanded \$2,500,000 in bricks and mortar. A fee agreement had been requested on the machinery and equipment for the expansion this year (\$4,300,000).

Committee Member Steve Davis questioned if Berkeley County had an existing fee agreement with this company.

Mr. Butler responded there to be an existing agreement, but this would be a totally new fee agreement just on the machinery and equipment being added.

Committee Member Steve Davis questioned the consequences if Berkeley County did not allow a fee-in-lieu on the machinery and equipment.

Mr. Butler responded that it would be a six (6) percent fee on the machinery and equipment, for a period of ten (10) years.

Committee Member Steve Davis questioned if this was an agreed upon fee which was arranged by the County.

Mr. Butler responded that to be correct.

Committee Member Steve Davis questioned if the fee arrangement was in compliance or in conjunction and comparable with other equipment fee-in-lieu agreements the County had made.

Mr. Butler responded that it was; thus, pretty standard.

The motion passed by unanimous voice vote of the Committee.

**D. Review** prior to **Third Reading** of **Bill No. 09-30**, an **ordinance** authorizing the amended and restated **fee-in-lieu** of tax agreement (the “amended and restated fee agreement”) by and between Berkeley County, South Carolina, and HW Berkeley Phase II-A, LLC, HW Berkeley Phase II-B, LLC, HW Berkeley Phase II-C, LLC, HLIT IV SC-1, LP, and HLIT IV SC-2, LP, (the “parties”), and the bifurcation thereof, the result of which shall be two separate amended and restated fee-in-lieu of tax agreements titled as follows: (1) the amended and restated fee-in-lieu of tax agreement by and between Berkeley County, South Carolina, and **HW Berkeley Phase II-A, LLC, HW Berkeley Phase II-B, LLC, and HW Berkeley Phase II-C, LLC**, (“phase two”); and (2) the amended and restated fee-in-lieu of tax agreement by and between Berkeley County, South Carolina, and **HLIT IV SC-1, LP, and HLIT IV SC-2, LP**, (“phase one”), in consideration of additional on-going investment by the company; and other matters relating to the foregoing.

It was moved by Committee Member Callanan and Committee Member Farley to **approve** review, prior to **Third Reading**, of **Bill No. 09-30**. The motion passed by unanimous voice vote of the Committee.

It was moved by Committee Member Callanan and seconded by Committee Member Call to **adjourn** the meeting of the Committee on Finance. The motion passed by unanimous voice vote of the Committee.

Meeting adjourned at 6:49 p.m.

November 23, 2009  
Date Approved

**FINANCE**  
(Standing Committee of Berkeley County Council)

Chairman: Mr. Jack H. Schurlknight, District No. 6

Members: Mr. Phillip Farley, District No. 1  
Mr. Timothy J. Callanan, District No. 2  
Mr. Robert O. Call, Jr., District No. 3  
Mrs. Cathy S. Davis, District No. 4  
Mr. Dennis L. Fish, District No. 5  
Mr. Caldwell Pinckney, Jr., District No. 7  
Mr. Steve C. Davis, District No. 8  
Mr. Daniel W. Davis, Supervisor, ex officio

A **meeting** of the **COMMITTEE ON FINANCE**, Standing Committee of Berkeley County Council will be held on **Monday October 26, 2009**, following the meeting of the Committee on Justice and Public Safety and Community Services at **6:00 p.m.**, in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

**AGENDA**

**APPROVAL OF MINUTES:**

**September 14, 2009**  
**September 28, 2009**

**A. Consideration** of the following:

- 1. A resolution** granting extra Holiday **leave** in recognition of the **2009 Holiday Season**.
- 2. A resolution** determining that Pine Tree Cablevision Associates is not in compliance with the Berkeley County Cable Television Ordinance.
- 3. A resolution** in support of the issuance by the South Carolina Jobs-Economic Development Authority of its Economic Development Revenue Bonds (**Goodwill Industries of Lower South Carolina, Inc. Project**) Series 2009, pursuant to the provisions of Title 41, Chapter 43, of the Code of Laws of South Carolina 1976, as amended, in the aggregate principal amount of not exceeding \$25,500,000.
- 4. A resolution** proclaiming the week of October 23 – 31, 2009, as **National Red Ribbon Week in Berkeley County**.
- 5. A resolution** approving the assignment of existing Fee-In-Lieu of Tax arrangements with Berkeley County by **Lanxess Corporation to Cooper River Partners, LLC**, or its permitted designee

**B. Consideration prior to First Reading** of an **ordinance** to amend the agreement for **Development of a Joint County Industrial Park** executed on April 24, 1995, by and among **Berkeley County, South Carolina and Williamsburg County, South Carolina**, providing for the Development of a jointly owned and operated Industrial/Business Park so as to include additional property in both Berkeley County and Williamsburg County as part of the Joint County Industrial Park and other matters related thereto.

**C. Review prior to Second Reading** of the following:

**1. Bill No. 09-43**, an **ordinance** amending Ordinance Number 09-07-35 providing for the fiscal year beginning July 1, 2009, and ending June 30, 2010, for the **Tall Pines Special Tax District** revenues and expenditures.

**2. Bill No. 09-44**, an **ordinance** authorizing the execution and delivery of a Fee Agreement between Berkeley County, South Carolina and **Joseph T. Ryerson & Son, Inc.**; and matters relating thereto.

**D. Review prior to Third Reading** of the following:

**1. Bill No. 09-30**, an **ordinance** authorizing the amended and restated Fee In lieu of Tax Agreement (the “amended and restated fee agreement”) by and between Berkeley County, South Carolina and **HW BERKELEY PHASE II-A, LLC, HW BERKELEY PHASE II-B, LLC, HW BERKELEY PHASE II-C, LLC, HLIT IV SC-1, L.P. AND HLIT IV SC-2, L.P.** (the “parties”), and the bifurcation thereof, the result of which shall be two separate amended and restated fee in lieu of tax agreements titled as follows: (1) the amended and restated fee in lieu of tax agreement by and between Berkeley County, South Carolina and **HW BERKELEY PHASE II-A, LLC, HW BERKELEY PHASE II-B, LLC AND HW BERKELEY PHASE II-C, LLC** (“phase two”); and (2) the amended and restated fee in lieu of tax agreement by and between Berkeley County, South Carolina and **HLIT IV SC-1, L.P. AND HLIT IV SC-2, L.P.** (“phase one”), in consideration of additional on-going investment by the company; and other matters relating to the foregoing.

October 21, 2009  
S/Barbara B. Austin, CCC  
Clerk of County Council